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OLC 78-347/10
13 November 1978

MEMORANDUM FOR: [REDACTED] 25X1
Acting Director, Policy Guidance Office

FROM : [REDACTED] 25X1
Acting Legislative Counsel

SUBJECT : Input to the DCI's Annual Report

REFERENCE : Your Memo dtd 18 October 1978 (DCI/IC 78-1199)

As requested in reference, attached is the Office of Legislative
Counsel's input to the DCI's Annual Report to the President and Congress.
Tabs A-E correspond to the questions posed in paragraph 3 of reference.

Should you or [REDACTED] have any further questions, please contact
[REDACTED] of my staff. 25X1

Attachments:
As Stated

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SUMMARY OF 1978 ACTIVITIES OF SENATE SELECT COMMITTEE ON INTELLIGENCE

The Committee began its second full year with 17 full Members, up two from 1977, plus the Senate Majority and Minority leaders who are ex-officio Members. In addition, it has a staff of 30 professionals with an additional 19 nonprofessionals. Citing his belief that SSCI Chairmanship should be rotated regularly, Senator Inouye resigned the Chairmanship. Senator Birch Bayh was appointed the new Chairman and will serve through 1980. The Committee began the year with public hearings on the President's nomination of Ambassador Carlucci as Deputy Director of Central Intelligence.

The Committee's major concerns for 1978 were as follows:

Intelligence Charters

A major step in fulfilling a principal recommendation of the Church Committee that national foreign intelligence be regulated by new statutory charters was taken when the Senate Select Committee on Intelligence introduced S. 2525 in February. The 263 page bill was the product of nearly two years of work by the Committee staff and discussions with the Executive Branch. The Committee held public hearings on the bill in April through August, featuring 38 public witnesses, including former DCIs, military officers with intelligence backgrounds, academicians, and others.

*what
philosophy
underlies it?*

Electronic Surveillance Legislation

Drawing upon strong Administration support, the Select Committee, in conjunction with the Senate Judiciary Committee, considered and favorably reported S. 1566, the Foreign Intelligence Surveillance Act of 1978. This bill was passed by the full Senate by an overwhelming 95-1 vote.

FY-1979 Authorization

The Committee conducted its second annual review of the National Foreign Intelligence Program, this one for Fiscal Year 1979. The process began with closed hearings in February and March at which the DCI as well as individual program managers testified. The Committee next reported its judgments on proper spending levels for full Senate consideration. Senate passage was delayed pending attempts to resolve with the Senate Armed Services Committee jurisdictional questions concerning Intelligence Related

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Activities. Although the issue on whether the Armed Services Committee had sole or shared jurisdiction was not resolved, an accommodation was reached which permitted passage of the authorization bill.

The FY-78 authorization bill did not receive House consideration and therefore, was not enacted. The FY-79 bill, however, was the subject of a conference between House and Senate Intelligence Committee Members, and was approved by the President on 17 September 1978.

Report on Use of Classified Information in Criminal Prosecutions

The year-long efforts of the Subcommittee on Secrecy and Disclosure were devoted to studying the problem the Government has in prosecuting cases in which classified information may be revealed in court. The Subcommittee's staff study of nearly 50 leak and espionage cases was followed by hearings and public testimony from Administration witnesses, including the DCI and Deputy Attorney General. One of the principal recommendations of the Subcommittee's report, issued in October, was for a pre-trial procedure to be authorized by statute, at which the presiding judge would determine which information would be presented at trial and thus available for discovery by defendant and his counsel. The Subcommittee also did not commit itself on the need for a major revision of the espionage laws, but did support a law to further protect intelligence sources and methods.

Use in
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Major Studies

The Committee completed a number of other major studies on intelligence issues. These included public studies entitled: "The National Intelligence Estimates A-B Team Episode Concerning Soviet Strategic Capability and Objectives"; "Soviet Oil Situation: An Evaluation of CIA Analysis of Soviet Oil Production, May 1978"; "Unclassified Summary: Involvement of NSA In Development of the Data Encryption Standard"; and "Activities of 'Friendly' Foreign Intelligence Services in the U.S. - A Case Study."

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A Study on the Quality of Intelligence on China (classified), a report of a staff inquiry into Frank Snepp's allegations, and a study on the Government's reorganization and capability to counter international terrorism are nearing completion.

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Upcoming Issues

In calendar year 1979, we can again expect that a great deal of the Committee's efforts will be devoted toward developing charters and the FY-1980 authorization bill. The Committee hopes that the Senate will in 1979 be able to pass comprehensive intelligence charters with the full support of the Administration. A third major issue for the Committee during 1979 will be Senate ratification of a SALT agreement.

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Angola - report?
prelim. SALT work?

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SUMMARY OF THE 1978 ACTIVITIES OF HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

The HPSCI's principal concern during 1978 was organizational structure, obtaining necessary background and establishing its role within the House of Representatives. In addition to the 13 full Members, its staff of 28 includes 14 professionals, many of whom have been drawn from the Executive Branch. (1)

The Committee's approach has been to assure that the Intelligence Community is doing its job properly and, when appropriate, to look into ways and means of improving the quality of the Community activities either via legislation or improved procedures. During 1978, the Committee devoted special attention to:

a. A detailed study on warning. The DCI has created a clear central focus for intelligence warning in the person of an NIO for Warning. (3)

b. A detailed study and series of hearings on Automatic Data Processing within the entire Intelligence Community. ADP

c. CIA's relationship with the media. After extensive hearings, both open and closed, the Committee did not make any recommendations for new guidelines and the general sense gleaned from those hearings is that existing guidelines are adequate to protect the media and the U.S. population from inappropriate influence by CIA over the media. (3)

d. The Committee looked into the entire covert action approval process (Presidential Findings, Perspectives) and has concluded that the approval process as well as the reporting procedures called for in Hughes-Ryan Amendment are cumbersome and may inhibit the development of worthy programs. (3)

e. The Committee held several hearings, both open and closed, on the subject of Intelligence Community coverage and handling of narcotics and terrorism. In both instances, the Committee focused on the degree to which the Community may be precluded from performing as well as it might by a combination of existing guidelines and interpretations thereof. (3)

f. The Committee looked into the issue of the need for legislation to better protect sources and methods and is convinced of the need for such legislation. / * ok n
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g. The Committee passed the first Intelligence Community Authorization Bill. In conjunction with its authorization responsibilities, the Committee has initiated a study of HUMINT, to determine how valuable it really is and whether it is worth the cost and risks attendant to it. (2)

h. The Committee was very involved in the passage of the Foreign Electronic Surveillance Bill and was exceedingly helpful with regard to the Civil Service Bill and the Financial Disclosure Bill as well as the CIA's special retirement system (CIARDS).

The Committee's first year was devoted to the above activities. It is probably fair to state that the Committee is well disposed toward the Intelligence Community and wants to assure itself that the Community and its several parts are doing their jobs as well as they can and as efficiently as possible. The Committee also wants to be assured that Community activities are well within the law as well as to ensure that applicable legislation is created or modified to enable Community responsiveness to national security needs.

In the coming 96th session, the HPSCI will devote the bulk of its time to the following matters:

(1) a. The Authorization Bill.

b. Completion of the Committee's study on the value of HUMINT. > Jhrd?

c. The degree to which the Community has consolidated its ADP resources and made the best use of ADP. note in ADP needed

d. Legislation with regard to: charters and legislation to protect sources and methods.

e. A study on the estimating, forecasting and trend analysis process.] 3a not assigned

f. A study of the effectiveness and adequacy of the Community's counterintelligence capabilities.

(2) g. The degree to which the DCI has the authorities he needs over the rest of the Intelligence Community to assign priorities and effectively deal with the Intelligence Community budget.

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INTELLIGENCE CHARTER LEGISLATION

The "Intelligence Charter" legislation introduced in early February was the subject of extensive public hearings and close Administration scrutiny in preparation for its reintroduction of the 96th Congress. The SSCI received extensive testimony from former Executive Branch officials, academicians, and civil libertarians. The testimony received represents viewpoints reflecting a wide variety of political beliefs--including former intelligence officers, the ACLU and so-called "Victims of Intelligence." This procedure reflects the position of the sponsors of the legislation, who stressed on introduction and during the hearings that the bill is intended to serve as an "agenda for discussion" which will be revised for reintroduction early in the 96th Congress. The Senate Committee did not call on any current Administration witnesses. Attendance of both Senators and the general public was spotty.

Individual Committee members who attended the hearings did admit to the overly detailed approach reflected in the bill as introduced and opined that the bill probably contains too many reporting requirements.

The House oversight committee held no hearings on the bill, which was introduced in the House as a formality.

The Administration convened on NSC/SCC Charter Working Group, which for the past several months has met to deliberate the various titles in an effort to develop Administration positions. Redrafts and issue papers on all titles have been submitted to the President and negotiations with Senate staffers have already been reinitiated. *GC new DDC*

The SSCI staff is committed to an early reintroduction of the bill and is looking to completing legislative action on the charters during the 96th Congress. However, charter legislation will have to vie for early Congressional attention along with the anticipated SALT Treaty, which is sure to take up a great part of the first half of the new Congress.

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IMPORTANT ASPECTS OF RELATIONS WITH OTHER CONGRESSIONAL COMMITTEES DURING 1978

In keeping with the mandate given the DCI by Section 1-601(c) of Executive Order 12036 to "facilitate the use of national foreign intelligence products by the Congress in a secure manner," the Intelligence Community has continued efforts to enhance substantive intelligence support to the Congress through briefings and through the provision of both classified and unclassified intelligence assessments. Special efforts were made during 1978 to acquaint potential Congressional customers with the variety of unclassified intelligence products available. For example, for the first nine months of 1978, the CIA alone provided the Congress over 239 briefings and serviced over 1355 requests for documents.

The Intelligence Community also supported a number of Congressional investigative efforts during 1978. These included the House Select Committee on Assassinations' massive investigation. House and Senate probes into [REDACTED]

[REDACTED], an investigation concerning alleged Nazi war criminals residing in the U.S. by a House Judiciary Subcommittee, and a Senate Foreign Relations Subcommittee investigation of the activities of foreign intelligence services in the U.S. In addition, the Intelligence Community cooperated with the Senate Ethics Committee in its investigations of several instances of unauthorized disclosures of intelligence information that may have involved the Senate.

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RELATIONS WITH CONGRESSIONAL COMMITTEES REGARDING NFIP AND BUDGET

1978 was a historic year in terms of Congressional authorization and appropriation of the FY-1979 NFIP budget. On 17 September, the President signed into law the first annual authorization act for intelligence and intelligence-related activities (PL 95-370).

The President's signing message cited the Act as symbolizing the "recent achievements of Congress that broaden and intensify oversight of intelligence activities through a cooperative effort with the Executive agencies." He commended the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, and the House and Senate Armed Services Committees for their efforts in enhancing Congressional oversight while minimizing the risks of disclosure of classified information.

< This new authorization process did not proceed without incident. > *Should discuss*
The secret aspect of the Act was debated at some length in the House, and HPSCI Committee Members assured the House that the decision to keep the numbers classified was a temporary decision which would be reviewed by HPSCI. The President, in his signing message, indicted that the classified annex to the Act differed from his program in some important aspects which he felt compelled to have modified in the appropriation process. He could not, of course, openly discuss the issues of concern. Finally, when the Appropriation Conference Report on the NFIP reached the House for a vote, the Chairman of the Program and Budget Subcommittee of HPSCI made the following statement.

"Mr. Speaker, I have signed the conference report 'except as to certain intelligence matters.' I have done this to express my concern regarding a portion of the appropriation for the national foreign intelligence program which is described in a classified annex to the joint statement. Specifically, I am distressed that funds for a major technical program which were authorized for a particular purpose are now being appropriated for a different purpose. This has occurred because conferees accepted a last minute proposal by the administration which has the effect of thwarting the clear intention of authorization. This could not have been done in public because such action was clearly subject to a point of order. Despite the substantial progress this year in congressional oversight of intelligence, these actions trammel the authorization process and cause me to question whether our control of intelligence has yet reached maturity."

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substance of issue or form, or both?

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This creates a dilemma for me. While I understand fully, and support the need for confidentiality in these matters, it is wrong for the administration to take advantage of secrecy, however necessary, to thwart clear congressional intent."

The entire Congressional authorization process was characterized by multiple authorizations, multiple jurisdictional claims among committees and for many collateral issues to be attached to authorization bills.

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The detailed authorization review by the Congress also put a new face on the older appropriation process. The Appropriations Committees in both houses took serious note of authorization decisions, and in the final analysis, the enacted 1979 NFIP budget in large measure reflects the decisions made by the authorization Committees and concurred in by Appropriations.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Acting Legislative Counsel

EXTENSION

NO.

OLC 78-347/10

DATE

13 November 1978

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Acting Director, Policy Guidance Office

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